IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Date of decision: 30.11.2006

State of Haryana Vs. Savita and others

CORAM: **Hon'ble Mr. Justice Virender Singh**
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Sidharath Batra, AAG, Haryana,
for the appellant.

Virender Singh, J.

Savita wife of Mukesh and Bhanmati wife of Dayal Singh, the respondents herein, along with one Parmod Kumar son of Charan Singh were booked in a case bearing FIR No.166 dated 9.4.2004, under Sections 363, 366-A, 376/120-B of the Indian Penal Code, registered at Police Station City Karnal. Aforesaid Parmod Kumar has been convicted under Sections 363/366-A/376 IPC and has been sentenced accordingly. The maximum sentence awarded is seven years under Section 376 IPC. The present two respondents stand acquitted vide impugned judgment of learned Additional Sessions Judge, Karnal dated 23.2.2006. State of Haryana has preferred the instant appeal against the impugned judgment of acquittal along with an application bearing No.510-MA of 2006 under Section 378 (3) of the Code of Criminal Procedure for grant of leave to appeal.

We have heard Mr. Sidharath Batra, learned Addl. Advocate

General, Haryana and with his assistance gone through the entire evidence.

Mr. Batra submits that both the respondents have been wrongly acquitted by the learned trial Court. According to him, the complainant (PW1) and the prosecutrix (PW2) had fully supported the case of the prosecution and as such there were corroborative evidence against the respondents. He then contends that the prosecutrix in this case was below the age of 16 years who in fact was subjected to sexual intercourse by aforesaid Parmod Kumar (since convicted) in connivance with the respondents and, therefore, they should have been convicted with the aid of Section 120-B IPC.

We are not convinced with the arguments advanced by Mr. Batra. The learned trial Court while acquitting both the respondents has observed in para no.18 of the impugned judgment as under:-

> " This takes me to the second question, "Whether the accused in connivance with each other had kidnapped and raped the prosecutrix?" The Prosecutrix and her mother in her testimonies have categorically deposed the manner in which the accused had kidnapped and raped her. As per the report of FSL Ex.PF, human semen was detected on the petticoat, underwear and slides taken by Dr. Archana (PW4) during the course of medico legal examination of the prosecutrix. I have carefully scanned the testimonies of Dr. Archna (PW4), prosecutrix Nanhi (PW2) and Satwanti mother of prosecutrix (PW1). This court is of the considered view that accused Parmod had enticed, kidnapped and raped the prosecutrix. However, so far as the

> allegations against the accused Savita and Bhanmati are concerned, there is no cogent or independent evidence led by the prosecution to prove the same. Nanhi Devi prosecutrix and her mother are highly interested witnesses of this case. The prosecution has failed to produce any independent witness to prove the charges against accused Bhanmati and Savita. The Investigating Officer also found accused Bhanmati and Savita innocent, during the investigation of the case. So, both of them are liable to be acquitted."

On our asking, Mr. Batra has read out the statements of the main prosecution witnesses. We are of the view that the prosecution case is not free from doubt qua the present two respondents and, therefore, do not intend to disturb the order of acquittal.

The scope of interference by the appellate Court in the judgment of acquittal is very limited. Principles governing interference in the judgment of the acquittal by the Appellate Court has been laid down in ***Bhim Singh Vs. State of Haryana*** *2002 (10) SCC 461* by making the following observations:-

> "Before concluding, we would like to point out that this Court in a number of cases has held that an appellate court entertaining an appeal from the judgment of acquittal by the trial court though entitled to re-appreciate the evidence and come to an independent conclusion, it should not do so as a matter of routine. In other words, if from the same set of evidence two views are possible and if the trial court has taken one view on the said evidence, unless the appellate court comes to the conclusion that the view taken by the trial

Court is either perverse or such that no reasonable person could come to that conclusion or that such a finding of the trial court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the trial court.

In another latest judgment of Hon'ble Apex Court rendered in ***Kallu @ Masih and others vs. State of Madhya Pradesh*** *2006 (1) RCR (Criminal) 427,* it has been observed that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not be reversed merely because a different view is possible. It is further observed that the appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of doubt.

After re-appreciating the entire case, we do not find any perversity warranting a different view than the one already taken by the learned trial Court.

Resultantly, finding no merit, Crl. Misc. No.510-MA of 2006 is hereby dismissed.

(Virender Singh)
Judge

(A.N. Jindal),
Judge

November 30, 2006
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